

BETWEEN:

PIERRE SAINÉ,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on August 25, 2003, at Montréal, Quebec

Before: The Honourable Justice P.R. Dussault

Appearances:

For the Applicant: The Applicant himself

Agent for the Respondent: Mélanie Bélec (Student-at-law)

ORDER

Upon application for an Order extending the time within which appeals from the assessments made under the *Income Tax Act* for the 1992, 1993 and 1994 taxation years may be instituted;

And upon hearing what was alleged by the parties;

The application is dismissed in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 19th day of September 2003.

"P.R. Dussault"

Dussault, J.

Translation certified true
on this 5th day of August 2004.

Sophie Debbané, Revisor

Citation: 2003TCC679
Date: 20030919
Docket: 2003-2126(IT)APP

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REASONS FOR ORDER

Dussault, J.

[1] The applicant seeks an order to extend the time within which he may institute appeals from assessments made under the *Income Tax Act* ("Act") for the 1992, 1993 and 1994 taxation years.

[2] In his reply to the application, the Deputy Attorney General of Canada states the following at paragraphs 1 to 7:

[TRANSLATION]

1. On March 15, 1996, the Minister of National Revenue (hereinafter the "Minister") sent the applicant a notice of reassessment for the 1992 taxation year.
2. On or around April 30, 1997, the applicant served notice on the Minister of his objection to the reassessment dated March 15, 1996, for the 1992 taxation year.

3. On February 23, 1999, the Minister sent the applicant notices of reassessment for the 1993 and 1994 taxation years.
4. On or around March 1, 1999, the applicant served notice on the Minister of his objection to the reassessments dated February 23, 1999.
5. By registered letter dated April 8, 2002, the Minister informed the applicant that he had confirmed the reassessments dated March 15, 1996, for the 1992 taxation year and dated February 23, 1999, for the 1993 and 1994 taxation years.
6. The applicant did not institute appeals in respect of the reassessments, confirmed on April 8, 2002, to the Tax Court of Canada within the time provided for by subsection 169(1) of the *Income Tax Act* (hereinafter the "*Act*"), which ended on July 7, 2002.
7. On June 10, 2003, the applicant filed an application to extend the time to appeal to the Tax Court of Canada in respect of the notices of reassessment made for the 1992, 1993 and 1994 taxation years.

[3] The applicant admitted these facts but moreover added that this recitation was not exhaustive since there had been a "cascade" of various assessments starting in 1994 and ending in 2002. In fact, the final assessment for the 1992 taxation year was made on March 15, 1996, and the final assessments for the 1993 and 1994 taxation years were made on February 23, 1999. The applicant objected to those assessments in due time, and those three assessments were confirmed on August 8, 2002.

[4] However, the applicant contends that he did not receive the notice of confirmation dated April 8, 2002, sent by registered mail (Exhibits I-1, I-2 and I-3). And yet his spouse, Chantal Raymond, accepted the letter and signed the acknowledgement of receipt. The applicant stated that he had left the family home on Querbes Street in Outremont in January 2002 and that in April 2002 he was living at his mother's home. First, he said that his spouse had not given him the notice of confirmation and then said that it was possible that she had given it to him but that he could not confirm it.

[5] The applicant also said that he had not received a letter dated February 8, 2002, from the Appeals Division informing him of the decision made by the authorities to confirm the assessments in issue.

[6] In his testimony, Charles Lemire, an appeals officer, said that a test case in a similar matter, *McKeown v. Canada*, [2001] T.C.J. No. 236 (Q.L.), had already been before the Tax Court of Canada and that the case of the applicant, who had not yet instituted an appeal, had been put on hold. Mr. Lemire said he had first been in contact with the applicant in June 2001, then in July that same year, namely, to answer his questions. The authorities decided to confirm the assessments in the applicant's case eight to ten months after the decision in *McKeown, supra*, and that decision was then indicated in the aforementioned letter dated February 8, 2002, in which the applicant was given 30 days to submit his comments. Since no news was received from him when that period had expired, the assessments were confirmed 30 days later, on April 8, 2002, and the notice was sent by registered mail.

[7] Daniel Zane, a collection officer with the Canada Customs and Revenue Agency (the "CCRA"), contacted the applicant's accountant, a certain Mr. Létourneau, on November 13, 2002. Mr. Létourneau told him that the applicant had not received the notice of confirmation dated April 8, 2002. It was Mr. Létourneau who informed Mr. Zane that the Querbes Street address was no longer valid and gave him the new address on Laurier Street West. After receiving confirmation of Mr. Létourneau's mandate, Mr. Zane faxed him a copy of the letter of intent dated February 8, 2002, and the notice of confirmation of the assessments dated April 8, 2002.

[8] In his testimony, the applicant stated that he had contacted a certain Ms. Matteau of the CCRA in November or December 2002. She told him to [TRANSLATION] "*put together a file*". The applicant said he had looked for his documents in order to prepare a complete file, which would have taken him a lot of time since the [TRANSLATION] "*records were scattered*". That file was entered in evidence by the applicant (Exhibit A-1). It essentially consists of letters the applicant sent to various CCRA employees in 1994 providing his comments on his research and development project.

[9] The file prepared by the applicant was forwarded to Mr. Lemire, the appeals officer, in May 2003. It was he who then contacted the applicant on May 23. The applicant wanted to put the matter before the court of competent jurisdiction. Mr. Lemire therefore told him to institute an appeal and returned him the file given.

[10] The application for an extension of time was filed with the Tax Court of Canada on June 10, 2003.

[11] First, it appears that the applicant did not give CCRA notice of his change of address before November 13, 2002, and that his accountant did so for him in his communication with Mr. Zane.

[12] Second, the notice of confirmation dated April 8, 2002, was sent to the applicant in the regular manner at his address last known to CCRA. Moreover, his spouse took delivery and signed the acknowledgement of receipt.

[13] The applicant is in fact not certain whether his spouse gave him the notice of confirmation in April 2002. One thing that is certain, however, is that Mr. Zane sent the notice again, to the applicant's accountant, Mr. Létourneau, on November 14, 2002. I note here that, like all notices of confirmation, that notice ends with the following paragraph:

[TRANSLATION]

If you disagree with this decision, you may appeal to the Tax Court of Canada. Information on how to proceed is attached.

[14] Counsel for the respondent claims that the applicant, who did not institute an appeal within the 90-day period following mailing of the notice of confirmation, also did not demonstrate that the application for an extension of time to do so was made as soon as circumstances permitted.

[15] I agree. Although the applicant still appeared to want to continue his efforts with CCRA employees in November or December 2002, he was in a position to appeal to the Court as of November 14 of that year. It can certainly not be concluded from the fact that he waited nearly seven months in order to do so that the application was made as soon as circumstances permitted, as required under subparagraph 167(5)(b)(iii) of the *Act*.

[16] The application is accordingly dismissed.

Signed at Ottawa, Canada, this 19th day of September 2003.

"P.R. Dussault"

Dussault, J.

Translation certified true
on this 5th day of August 2004.

Sophie Debbané, Revisor